

1 TERRY L. BAKER (SBN 214365)  
2 820 Bay Avenue, Suite 230L  
3 Capitola, CA 95010  
4 Tel: (831) 476-7900  
5 Fax: (831) 476-7906  
6 tbaker@consumerlawgroup.net

ADR

Filed

DEC - 7 2012

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

Attorneys for Plaintiff  
BENJAMIN FRIEDENBERG

E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

BENJAMIN FRIEDENBERG,  
Plaintiff,

Case No. **CV 12-6206**  
COMPLAINT

HRL

vs.

DEMAND FOR JURY TRIAL

CAPPO MANAGEMENT XXIII, INC., a  
corporation; CHRIS O'CONNELL, an  
individual; and DOES ONE through  
TWENTY,

Defendants.

JURISDICTION

1. The court has federal question jurisdiction under Title 15 U.S.C. § 1681p and Title 28 U.S.C. § 1331, as well as supplemental jurisdiction over plaintiff's state law claims under Title 28 U.S.C. § 1367.

2. This is an action for damages brought by an individual consumer for defendants' violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., which strictly limits the purposes for which a consumer's credit report may be used and strictly prohibits users, such as defendants from obtaining consumers' credit reports without the consumer's permission when no permissible purpose exists.

3. Plaintiff Ben Friedenberg, at all times mentioned, was, and still is, a resident of

1 Santa Cruz County, California.

2 4. Defendant, Cappo Management XXIII, Inc. (hereinafter "DEALER"), is a  
3 California corporation, with its principal place of business located at 3801 Soquel Drive,  
4 Soquel, California 95073.

5 5. Defendant, Chris O'Connell (hereinafter "OCONNELL"), is an individual and  
6 is an employee and agent of DEALER.

7 6. All acts of the agents, servants and employees of defendant DEALER, as  
8 alleged in this complaint, were performed by such agents, servants and employees within the  
9 course and scope of their agency and employment with DEALER and were authorized and/or  
10 ratified by DEALER.

11 FACTS COMMON TO ALL COUNTS

12 7. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1681a(c).

13 8. On or about January 26, 2011, plaintiff contacted DEALER to inquire about  
14 possibly purchasing a vehicle from DEALER. Plaintiff spoke with OCONNELL.

15 9. During discussions with OCONNELL, plaintiff made it clear that if he decided  
16 to purchase a vehicle from DEALER, he would paying cash and that he would not be seeking  
17 credit. Plaintiff made it clear that he did not want DEALER to obtain his credit file under  
18 any circumstances.

19 10. Despite assurances from OCONNELL that no credit report would be obtained,  
20 DEALER and OCONNELL obtained one anyway. DEALER and OCONNELL violated 15  
21 U.S.C. § 1681b(f) which has resulted in damages to plaintiff.

22 11. Defendants' inquiry on plaintiff's credit report has become a permanent  
23 component of plaintiff's credit profile and is reported to those who ask to review plaintiff's  
24 credit history.

25 12. Defendants did not have any permissible purpose, as set out at 15 U.S.C. §  
26 1681b, for obtaining a credit report on plaintiff.

27 13. Defendants agreed and represented in its agreement with credit reporting  
28

1 agencies that they would request and use consumer reports which were obtained from credit  
2 reporting agencies only for purposes which are lawful under the Fair Credit Reporting Act as  
3 set at 15 U.S.C. § 1681b.

4 14. Defendants had an affirmative duty to follow reasonable procedures, including  
5 those that would prevent impermissible accessing of consumer reports, more specifically the  
6 impermissible accessing of consumer reports by managers, agents and employees of  
7 defendants.

8 **COUNT I**  
9 **(Willful Violation of Fair Credit Reporting Act 15 U.S.C. § 1681 et seq.)**  
10 **By Plaintiff and Against All Defendants**

11 COMES NOW the plaintiff and for Count I of his cause of action, based upon  
12 information and belief, states as follows:

13 15. Plaintiff incorporates as if fully set out herein all of his preceding allegations.

14 16. Defendants' conduct, as more fully set out above, constitute violations of Fair  
15 Credit Reporting Act.

16 17. Defendants willfully failed to comply with the Fair Credit Reporting Act.

17 18. As a direct and proximate result of defendants' conduct, plaintiff has been  
18 damaged in that he has suffered extreme emotional distress, embarrassment, humiliation, and  
19 aggravation. Further, defendants have compromised plaintiff's access to credit in that the  
20 inquiry placed on plaintiff's credit report will reflect to past, current and future creditors that  
21 plaintiff has applied for credit from DEALER.

22 19. As a result of the above violations of the Fair Credit Reporting Act, the  
23 defendants are liable to plaintiff as set out at 15 U.S.C. § 1681n in the sum of plaintiff's  
24 actual damages or statutory damages, punitive damages, the costs of this action and  
25 reasonable attorney's fees.

26 WHEREFORE, plaintiff requests judgment against defendants, jointly and severally,  
27 for actual damages or for statutory damages, for punitive damages, for attorney fees as  
28 provided for by statute, the costs of this action, and such other and further relief as the Court  
may deem just and proper.

1 **COUNT II**  
2 **(Negligent Violation of Fair Credit Reporting Act 15 U.S.C. § 1681 et seq.)**  
3 **By Plaintiff and Against All Defendants**

4 COMES NOW the plaintiff and for Count II of his cause of action, based upon  
5 information and belief, states as follows:

6 **20.** Plaintiff incorporates as if fully set out herein all of his preceding allegations.

7 **21.** Defendants' conduct, as more fully set out above, constitute violations of Fair  
8 Credit Reporting Act.

9 **22.** Pleading alternatively, defendants negligently failed to comply with the Fair  
10 Credit Reporting Act.

11 **23.** As a direct and proximate result of defendants' conduct, plaintiff has been  
12 damaged as set out in Count I above.

13 **24.** As a result of the above violations of the Fair Credit Reporting Act, the  
14 defendants are liable to plaintiff as set out at 15 U.S.C. 1681o in the sum of plaintiff's actual  
15 damages, the costs of this action and reasonable attorney's fees.

16 WHEREFORE, plaintiff requests judgment against defendants, jointly and severally,  
17 for actual damages, for attorney fees as provided for by statute, the costs of this action, and  
18 such other and further relief as the Court may deem just and proper.

19 **COUNT III**  
20 **(Invasion of Privacy)**  
21 **By Plaintiff and Against Defendant OCONNELL**

22 COMES NOW the plaintiff and for Count III of his cause of action, based upon  
23 information and belief, states as follows:

24 **25.** Plaintiff incorporates as if fully set out herein all of his preceding allegations

25 **26.** Defendant OCONNELL had a duty not to wrongfully invade plaintiff's  
26 privacy, such privacy rights include the financial, credit and other personal information  
27 pertaining to plaintiff that defendant OCONNELL obtained from the consumer reporting  
28 agencies or their affiliates and used.

**27.** Defendant OCONNELL, by his actions alleged herein, wrongfully invaded



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DEMAND FOR TRIAL BY JURY

Plaintiff demands trial by jury.

Dated: December 6, 2012 TERRY L. BAKER, ATTORNEY AT LAW

  
TERRY L. BAKER  
Attorneys for Plaintiff